

science has achieved since WWII. And I fear their apprehension is well justified.

But we should be honest with ourselves. Outside the scientific community, there is no hue and cry for more government funding of R&D. There is no widespread public outrage when the administration disregards the unequivocal judgment of the scientific community. And it's unlikely that the science gap growing between the United States and other developed nations will become a major issue in the upcoming Presidential campaign.

This represents a failure on our part. We have not done enough to show the American people the connection between the work underway in your laboratories and the problems that affect their lives. This must change. The stakes simply could not be higher. What future challenge will we fail to meet because America's scientists were not given the tools they need to discover new answers to old questions? When rumors of a Nazi bomb program reached President Roosevelt, he said simply, "Whatever the enemy may be planning, American science will be equal to the challenge." Will future presidents be able to speak with such confidence?

The challenge to the American scientific community is to rebuild the link not only between science and government, but between science and society. I believe we can do so, if we return to the model established by Thomas Jefferson. There is an implicit ongoing debate within the government regarding what kind of research is most important to support. Some suggest that we should put no limits on the kind of research we support and have faith that advances in theoretical science, regardless of the field, will inevitably translate into practical applications that improve human life.

For others, that approach is too abstract. There are real problems, and to spend taxpayer dollars on anything but the most pragmatic search for solutions seems high-minded, but naive. There is merit to each approach. Both kinds of research are critical.

But Jefferson offered a third way, and, I believe, the right way to make the best use of government's resources, and gain the full support of the American People for the efforts of science. Merriwether Lewis's expedition represented a basic attempt to enlarge the scope of America's understanding of the world around it. It was the stuff of doctoral dissertations. At the same time, because the mission was targeted at the urgent needs of an expanding nation, the voyage captured the support of Washington and the imagination of our young country.

America saw another tremendous example of this in recent years in the Human Genome Project. The effort pooled the combined wisdom of biology, chemistry, physics, engineering, mathematics, and computer science, tapped the strengths and insights of the public and private sectors, brought together 1,000 researchers from six different nations to reveal all 3 billion letters of the human genetic code. Few endeavors have brought together such diverse disciplines for a single and pure pursuit of scientific knowledge. The discoveries of the Human Genome Project have created extraordinary promise in the field of medicine, and brought to life an industry that could lead the American economy for a generation to come.

It has been nearly four years since the human Genome Project concluded its primary objective. If the science policy of this Administration has failed in any way, it has failed here: it has yet to point the way to the next great frontier of human understanding. It has yet to call scientists from every discipline to a single mission of public service.

Today, we need to rally once again around common goals, and put the broad interests of

the nation ahead of the narrow boundaries of scientific disciplines. Surely there is no shortage of challenges. Should we not set our nation's physicists, chemists engineers, and geologists to the task of freeing our nation from the need to import oil? Can we create the scientific and technological foundations for affordable, carbon-free energy sources? Can we "level the playing field" for American researchers that lack the resources of our nation's wealthiest universities? Is it beyond our imagination to address the major challenges of developing countries—such as cures and vaccines for AIDS, TB and malaria? In addition to the obvious moral and ethical imperative to do so, the economic and foreign policy benefits from harnessing our scientific and technical talent to foster sustainable development would be profound.

Let me suggest one final goal that could occupy the best efforts of scientists from every discipline for a generation to come. Now that we have surveyed the map of human life, let us turn our attention to that which makes human life unique: the mind. What challenge would be beyond our reach if we truly understood how we learn, remember, think and communicate? What could we accomplish if our education policy was bolstered with a new understanding of how children learn? How much safer could our neighborhoods be, if neurophysiology solves the puzzle of addiction? What industry would not be strengthened by a more complete picture of the workings of the mind? There is perhaps no field in which major advances would have more profound effects for human progress and health than that of neuroscience. If the American scientific community could come together and communicate to the nation the kaleidoscopic possibilities that could result if we unlocked the secrets of the mind, we could not only achieve untold advances in science, we could open a new chapter in the story of America's support for science.

Investments in science and technology are the ultimate act of hope, and will create among the most important legacies we can leave. America is still, as Emilio Segré said decades ago, the land of the future. We have held that honor since this continent was discovered by a daring act of science more than 500 years ago. We have earned it anew with each passing generation because America's scientists and public officials have understood the importance of applying the power of American curiosity to most intractable American challenges.

The hallmark of American science is not that we have been able to overcome each new frontier. The hallmark of American science is that having conquered one, we impatiently seek out new, more distant and difficult frontiers. America will be able to call ourselves the land of the future so long as we dream that the future holds a better life for ourselves, and so long as those of us who, in Adam's words, study politics, continue to invest in your ability to make that dream real.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent that the time for the two leaders be reserved for their use later in the day.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

OVERTIME REGULATIONS

Mr. KYL. Mr. President, I rise to speak to the legislation we are going to

be taking up when we go back to S. 1637, called the Jumpstart Our Business Strength Act, which will attempt to modify the law relative to how we treat manufacturing firms in tax policy to comply with rulings of the World Trade Organization and related legislation.

There is an amendment pending that will be offered by Senator HARKIN that relates to final regulations issued last week by the Department of Labor. I would like to speak to why we should quickly dispense with that Harkin amendment to move on with the S. 1637 and not get bogged down in the regulations that were issued by the Department of Labor.

The regulations issued a final rule to update the previous regulations that implemented the Fair Labor Standards Act. That act implements rules guaranteeing overtime pay for certain nonwhite collar workers—in other words, when somebody works longer than the period they would ordinarily be required to work, what circumstances the employer is required to then pay overtime pay for that additional work. The rules the Department of Labor has had in effect have not been modified for over a quarter of a century. The salary levels to which these regulations apply have not been changed since 1975. The duties test has actually not changed since 1949. That is the test that tries to define whether a worker is a white collar worker who would be exempt from this requirement or a blue collar worker who would be guaranteed overtime if they worked longer than they are supposed to. What this has done is to leave employers with very obsolete job classifications, things such as straw boss and leg man, other titles for work that have not been performed for years. That needed to be fixed.

The Department of Labor had been struggling to try to bring it up to date and get final rules into place, which now has been done. A lot of the concerns expressed by supporters of the Harkin amendment are based on interpretations or misreadings of the previously proposed rule. But a lot of that has now been cleared up in the final rule made effective last week. Much of the criticism should fall by the wayside.

Let me describe what the final rule does. It would guarantee overtime benefits to 1.3 million low-wage workers who before were not entitled to overtime pay. Under this rule, 6.7 million new employees must be paid overtime regardless of their duties. That is 1.3 million more than is currently the case. It would raise the minimum salary level at which workers are ensured overtime pay from \$155 to \$455 a week or \$23,660 annually. That is the largest increase since the law was enacted in 1938. Under the previous regulations, individuals earning the minimum wage, which would be about \$10,700 a year, were not guaranteed overtime.

They must be classified by their employers as nonexempt in order to receive overtime. The previous regulations guaranteed only employees earning less than \$8,000 a year a nonexempt status—in other words, guaranteed minimum wage. This regulation updates all of that.

The work the Department of Labor has done is going to help a lot of Americans. Over 6.7 million Americans will now be guaranteed this overtime pay and a lot more than that will probably get it, depending upon exactly what kind of work they perform. Under the new regulations, employees who earn more than \$100,000 annually would be exempted, but here again, even they would only be exempted if they regularly and customarily perform executive, administrative, or professional duties. Even somebody with earnings over \$100,000 a year could get overtime pay. The Department of Labor estimates only about 107,000 employees who earn \$100,000 or more could be reclassified as white collar employees and potentially lose their overtime pay. Those who earn between \$23,660 and \$100,000 will remain eligible for overtime pay if they meet the so-called "short test," which determines whether they are exempted white collar employees or not.

Let me respond to some of the misinterpretations. There was a view that a lot of folks would not be guaranteed pay. The new rules explicitly define certain groups as being guaranteed pay. For example, first responders, police officers, firefighters, paramedics, emergency medical technicians, and similar public safety officers are entitled overtime pay.

I ask unanimous consent to print in the RECORD a statement from the Fraternal Order of Police relating to these regulations.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FINAL DOL REGULATIONS PROTECT AND EXPAND OVERTIME FOR AMERICA'S FIRST RESPONDERS

F.O.P. EFFORTS CRUCIAL TO PROTECTION OF OVERTIME FOR PUBLIC SAFETY

Today National President Chuck Canterbury hailed the release of the Department of Labor's (DOL) final regulations on the exemptions from overtime under the Fair Labor Standards Act (FLSA) as an "unprecedented victory" for America's first responders. The regulations, which were first proposed in March 2003, highlight the F.O.P.'s singular and significant contribution to protecting the future of overtime compensation for State and local police officers, firefighters and EMTs.

"The Fraternal Order of Police is extremely grateful for the work of Secretary of Labor Elaine L. Chao and Wage & Hour Administrator Tammy McCutchen to take into consideration and incorporate the views of the F.O.P. in developing their final regulations," Canterbury said. "Since the beginning, the F.O.P. was alone in its confidence in this Administration's commitment to our nation's first responders, and their intention to resolve this issue to the benefit of these vital public servants."

On the preamble to the final regulations, the Department of Labor acknowledged that

it was responding specifically to the views of the Fraternal Order of Police "about the impact of the proposed regulations on police officers, firefighters, paramedics, emergency medical technicians (EMTs) and other first responders." DOL went on the note that the current regulations do not explicitly address the exempt status of these employees, and "this silence . . . has resulted in significant federal court litigation to determine whether such employees meet the requirements for exemption."

The final Part 541 regulations make several important changes for public safety employees. For the first time ever, the regulations clarify that neither the regulations contained in 29 CFR nor the Section 13(a)(1) exemptions apply to police officers, firefighters, EMTs and other first responders who perform public safety work. The regulations go on to clarify why these employees, regardless of their rank or pay level, cannot be classified as executive, administrative or professional employees, and thus be exempted from receiving overtime pay. In addition, the Department acknowledges that the right to overtime compensation may be extended to some public safety employees who are currently classified as exempt because of changes to the regulations.

"Where others were content to ask the Department to say in its final rule only that 'no expansion of law enforcement exemptions is included in or intended by the new rules,' the Fraternal Order of Police said 'today's public safety work is more unique than ever before, and the final regulations must account for the challenges faced by our nation's first responders in the post-9/11 environment,'" Canterbury said. "The final regulations achieve that goal."

On 31 March 2003, the Department of Labor published a Notice of Proposed Rulemaking in the Federal Register to revise and update the exemptions from overtime under the FLSA for executive, administrative, and professional employees; also known as the Part 541 or "white collar" exemptions. Immediately, the clarion call spread across the nation that the Department was trying to take away the right to overtime pay for hundreds of thousands of police officers, firefighters and EMTs.

During the public comment period, the F.O.P. worked with the International Association of Firefighters (AFL-CIO) to seek clarification of the Department's intent with respect to the overtime eligibility of public safety employees—an issue which was not explicitly addressed in the proposed rule. In late June, the F.O.P. submitted its formal written comments to the Department. It was the first organization to weigh in on behalf of America's law enforcement community regarding the proposed changes, and advised DOL about the potential impact of the proposal on public safety employees.

"We were never concerned that DOL was trying to destroy the ability of police officers and others to earn overtime compensation, despite the rhetoric employed by other groups and some legislators to vilify and demonize Secretary Chao," Canterbury said. "Rather, we believed it was important to point out that the regulations as proposed did not sufficiently recognize the increased workloads and hazards faced by public safety employees since the heinous terrorist attacks of September 11, 2001, and to use that as the basis for our efforts."

Canterbury explained that while the F.O.P. faced strident and often vitriolic opposition from other organizations who viewed this as a fight to maintain the status quo, the F.O.P. never considered this to be a viable solution because of the number of public safety officers currently classified as exempt under the existing regulations. Instead, the

F.O.P. viewed the proposal as a unique opportunity to correct the application of the overtime provisions of the FLSA to public safety officers.

"These final regulations show that this Administration and this Department of Labor are responsive to the concerns of rank and file first responders," Canterbury said. "There has been too much posturing and rumor mongering on this issue by the leadership of other police organizations, who have seemed intent on sacrificing their members' paychecks on the altar of partisan politics. I hope that those who have been so employed over the course of the past year can see the folly of their ways, and that we can all recognize this for what it truly is: an unprecedented victory for police officers and their families."

Mr. KYL. The Fraternal Order of Police is one of the groups very interested in this issue. It is the largest organization of sworn law enforcement officers, and obviously they are in support of the first responders being exempt from the nonguarantee—in other words, being guaranteed overtime pay.

Another group is nurses. The licensed practical nurses and other similar health care employees will be entitled to overtime pay under the new regulations. Originally unions had asserted to the contrary, but that is not the case. With respect to registered nurses, they are already exempted professionals under current law. The new rule will not change that. Explicitly blue collar workers are identified as entitled to overtime pay.

There was a question about cooks. They are entitled to overtime pay. The only people in that group that might not be are college degree chefs who have degrees in culinary arts, who supervise others in work they do. Paralegals will be entitled to overtime pay. Public sector inspectors, people such as building inspectors, will be entitled to overtime pay. Union courts, collective bargaining agreements in States will not be affected by the rule. This is another area that has been grossly misrepresented.

The bottom line is this final rule will bring clarity. It defines specific categories of people who will be guaranteed pay and, therefore, shuts down a lot of the litigation that has been based on the fact that the law has not been explicit or very clear. The confusing and outdated current or previous regulation has been a gold mine for trial lawyers, and there are a lot of articles that have recently been published that point out some of the abuses. The number of lawsuits in this area has doubled since the 1990s. Class action lawsuits have tripled since 1997. The number of these suits has actually surpassed the EEOC class action lawsuits in number.

While the trial lawyers have made out very well off of the confusion of the previous regulations, the plaintiff's benefit is significantly smaller. For example, in a recent Oregon lawsuit, which the Presiding Officer will be interested in, fast food restaurant workers each received \$1,300, while the trial lawyers received \$1.5 million. In a similar California case, workers got \$2,800

while the trial lawyers were awarded almost \$4 million.

Let me conclude by making a point that part of the confusion is due to objections by the AFL-CIO. Even before the final rule was made public, they were criticizing it, producing TV advertisements, misrepresenting the effect of the new rule. This is especially distressing given the fact—I know this personally from the Secretary of Labor, who had spent untold numbers of hours working on this—it was their intention to try to take in all of the criticisms and comments and blend them into a rule that made sense for workers. She did this, and then to have it attacked before it is finalized, with misrepresentations, is very unfair.

Prior to drafting a rule, the Department of Labor held over 40 stakeholder meetings with 50 different interested groups, including 16 different unions, and invited 80 groups to participate in these so-called stakeholder meetings. It was not as if this were done without the input of people clearly interested in it.

The amendment that is in order when we take up the bill is the Harkin amendment. It is unclear precisely what the wording of the amendment will be, but obviously the intent is to preclude the regulations from fully taking effect.

I urge my colleagues, after they review that language, to quickly dispose of the amendment so we can move on to the important business of passing the underlying JOBS bill. As we know, the only group of employees that is not going to be guaranteed overtime under the new regulations is those making over \$100,000 or more. The theory there is they are in a position to negotiate their own salary.

Just to conclude, if this new rule is not allowed to go into effect, the biggest winners under the new rule, which are the low-income workers, will be the biggest losers. We need to put this into effect, clear up the confusion, and create the specific categories that are guaranteed overtime pay or these people are going to lose. The police, the firefighters, the lower income people, the blue collar workers are not going to be assured overtime pay. Remember, it only previously would guarantee anybody with \$8,000 or less the overtime pay they should be entitled to.

The effect of the Harkin amendment will be to hurt workers, not to help them. It is my hope that, again, we can quickly dispense with the Harkin amendment, defeat that amendment, support the regulations, the new rules that have been adopted by the Department of Labor, let them go into effect, and see how they work; in the meantime, move on with S. 1637, the underlying legislation, the purpose of which is to finally get our manufacturing industry back on even par with our competitors, particularly in the European market. That is legislation we have to pass because of the tariffs that are being imposed each month until we comply with the ruling of the WTO.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent I be allowed to speak for 15 minutes, and I include in that request Senator REID of Nevada who has asked to follow me for an additional 15 minutes.

Mr. KYL. Mr. President, reserving the right to object, there is a division of time between the two sides. Could I suggest that regarding the remarks of the Senator from Florida with the Senator from Nevada, that they get together and figure out the time to speak if it will not be under leader time? Is that acceptable?

I will object to the request and try to talk to the Senator.

The ACTING PRESIDENT pro tempore. The objection is heard.

The Senator from Florida.

Mr. NELSON of Florida. Is the unanimous consent request that I made that I be allowed to speak for 15 minutes, is that acceptable?

The ACTING PRESIDENT pro tempore. It has been objected to.

Mr. NELSON of Florida. I ask unanimous consent that I be allowed to speak for 15 minutes, and if there is a Member on the other side of the aisle who would like to speak for 15 minutes, that they be allowed to do so, as well.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE POLARIZED SENATE

Mr. NELSON of Florida. Mr. President, that is an interesting segue into what I wanted to talk about, the polarized nature today of the Senate.

At times, this Senate has become so partisan, and increasingly so now, that it is in gridlock. There seems to be a playing out of "gotcha" politics that has poisoned the atmosphere in Washington, DC, so that it is hard to get the people's business done.

When I had the privilege of coming 4 years ago to the Senate, I had read the histories of the great leaders of this body and the extraordinary consensus and bipartisanship, that they would reach out and bring people together in order to form a consensus that could help the Nation govern itself. We find we have exactly the opposite happening in the Senate.

At the same time, what we find happening—under the Constitution, the separation of powers are a check and a balance against each other. That is beginning to erode. Instead, what we see is the power, instead of being equally divided and balanced between the judicial, the legislative, and the executive branches, we find in the executive branch almost an attitude that the legislative branch should become an appendage of what the executive branch wants. If that trend continues, the Constitution is not going to work as it was intended to work.

We find in the histories of this great body, when we have read about those

great leaders, even within our lifetime—Everett Dirksen, Lyndon Johnson, Mike Mansfield, and Bob Dole—they reached out and built bipartisan consensus. They were partisan when they needed to be, and yet they knew the way this body operates. One cannot break a filibuster except by 60 votes now; it used to be two-thirds. We have to build consensus, and we have to build it from the political center by reaching out and bringing people together.

The sharpness of this poisoned atmosphere of excessive partisanship and excessive ideological rigidity has made it very difficult for this Government to function. As a matter of fact, we read the articles recently in major periodicals where it seems ideology is lining up in one party or another, almost as if that is the decision point, the choice, for America to make.

But America has always yearned for another way and that was using the best of our democratic principles through the cross currents of ideas, through the intercourse of discussion, through the heat of debate, for ideas and consensus to emerge upon which to govern this wonderful, broad, beautiful, powerful, and very diverse country. Until we do that, we are going to continue to have a problem of gridlock.

There is something I can do about it by the way I conduct myself individually, day in and day out—when I make mistakes, own up to those mistakes and apologize to the people who would be offended by those mistakes in the interest of comity and consensus building. That is how this Senator has tried to conduct himself, failed as I may be.

That is how I will try to continue to conduct myself and hope I am joined by other Senators in that—through the way you conduct yourself, reaching out in the spirit of comity and personal friendship, and with a sight set on what is good for the Nation. Partisanship prevents us from building consensus in order to run this wonderful country we are privileged to serve and represent.

Mr. President, that is what has been on my heart.

THE GAO MISSILE DEFENSE REPORT

Mr. NELSON of Florida. Mr. President, I came to the floor to discuss a topic we will be taking up in the Senate Armed Services Committee later this week as we start to grapple with the authorization bill for the Defense Department—the question of missile defense.

This topic is timely for a number of reasons. First of all, the administration plans to deploy a "rudimentary" missile defense system this September, despite the fact it has not been proven to work. The Armed Services Committee begins consideration of this DOD fiscal year 2005 budget request, and the Pentagon has requested \$10 billion for missile defense systems in 2005,